

CHARLES L. BIBBS,

Plaintiff,

vs.

ARAMARK CORPORATION,
SUPERVISOR MARY AND BOB,
CHIEF PAULKINS and SGT.
KELLEY,

Defendants.

NO. CV-06-3039-EFS

ORDER DISMISSING ACTION WITHOUT
PREJUDICE

1915(g)

BEFORE THE COURT is Plaintiff's First Amended Complaint, filed August 11, 2006. Plaintiff, a prisoner currently housed at the Regional Justice Center/King County Correctional Facility, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

After review of the amended complaint, the Court finds it fails to cure the deficiencies of the initial complaint. Plaintiff signed his initial complaint in this action on May 12, 2006. He sought monetary damages for a "slip and fall" accident which occurred in the kitchen of the Yakima County Jail on or about May 9, 2006. Although Petitioner indicates he subsequently sought to exhaust administrative remedies, he did not do so prior to initiating this action as required by 42 U.S.C. § 1997e(a). See *Booth v. Churner*, 532 U.S. 731, 741 (2001); see also

ORDER DISMISSING ACTION WITHOUT PREJUDICE -- 1

1 *Porter v. Nussle*, 534 U.S. 516, 532 (2002) ("holding the PLRA's
 2 exhaustion requirement applies to all inmate suits about prison life,
 3 whether they involve general circumstances or particular episodes, and
 4 whether they allege excessive force or some other wrong.")

5 In any event, Plaintiff's allegations of the conditions which
 6 predicated his fall could be construed, at worst, as a run-of-the-mill
 7 slip and fall negligence type claim.¹ As previously advised, negligence
 8 is not actionable under section 1983. *Davidson v. Cannon*, 474 U.S. 344,
 9 347-48 (1986); see also *Daniels v. Williams*, 474 U.S. 327, 333
 10 ("[I]njuries inflicted by governmental negligence are not addressed by
 11 the United States Constitution. . . .").

12 While Plaintiff's averred injuries are unfortunate and may support
 13 a state tort claim, they do not rise to the level of a federal
 14 constitutional violation, and therefore, do not state a federal cause of
 15 action under 42 U.S.C. § 1983. See e.g. *Snyder v. Blankenship*, 473
 16 F.Supp. 1208, 1212 (W.D.Va. 1979) (failure to repair leaking dishwasher
 17 which resulted in a pool of soapy water in which prisoner slipped did
 18 not violate Eighth Amendment); *Robinson v. Cuyler*, 511 F.Supp. 161, 163

20 ¹In the amended complaint Plaintiff has added a claim that
 21 scalding water splashed on him when an other inmate overfilled a
 22 heating cart on May 4, 2006, causing third degree burns. He
 23 indicates an injury report was filed and he received medical
 24 attention. Plaintiff also complains he suffered "severe migraine
 25 head pains" due to strong smells from an electrical fire in the
 26 steamer on May 7, 2006. Plaintiff indicates the steamer was repaired
 27 the following day.

1 (E.D.Pa. 1981) ("[a] slippery kitchen floor does not inflict 'cruel and
 2 unusual punishments'"). Accordingly, **IT IS ORDERED** this action is
 3 **DISMISSED without prejudice** for failure to state a claim upon which
 4 relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

5 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
 6 who brings three or more civil actions or appeals which are dismissed as
 7 frivolous or for failure to state a claim will be precluded from
 8 bringing any other civil action or appeal *in forma pauperis* "unless the
 9 prisoner is under imminent danger of serious physical injury." 28
 10 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory**
 11 **provisions under 28 U.S.C. § 1915.** **This dismissal of Plaintiff's**
 12 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**
 13 **§ 1915(g) and may adversely affect his ability to file future claims.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to
 15 enter this Order, forward a copy to Plaintiff at his last known address,
 16 enter judgment, and close the file. The District Court Executive is
 17 further directed to forward a copy of this Order to the Office of the
 18 Attorney General of Washington, Criminal Justice Division.

19 **DATED** this 2nd day of October 2006.

21 S/ Edward F. Shea

22 _____
 EDWARD F. SHEA
 UNITED STATES DISTRICT JUDGE

24 Q:\Civil\2006\6cv3039efs-9-26-dis.wpd